IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11446 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJENDRASING VITRENDRASING RAJPUT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11446 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/11/2004

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 11.03.2004 passed by the Commissioner of Police, Ahmedabad City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner has been branded as "dangerous person" within the meaning of Section 2(c) of the PASA Act.

2. The impugned order of detention has been assailed by ld. counsel Mr. Prajapati appearing for the petitioner-detenu on various grounds as mentioned in para-4 of the petition. However, ld. counsel Mr. Prajapati has mainly concentrated on two grounds. The first point raised by ld. counsel Mr. Prajapati for the petitioner detenu is that the detaining authority has recorded wrong satisfaction that the activities of the detenu are prejudicial to the maintenance of the "public order", mainly on the ground that the detenu has involved himself in five different offences of theft of motor vehicles in different areas of districts of Ahmedabad and Gandhinagar. He has further submitted that even if it is accepted for the sake of arguments that the petitioner-detenu was involved in all the five offences allegedly committed in the year 2003-2004 within a span of one year, it can not be said that the activities of the petitioner detenu were such which were prejudicial to the maintenance of the "public order".

3. The second point raised by ld. counsel Mr. Prajapati for the petitioner detenu is the ground of parity. It is submitted by ld. counsel Mr. Prajapati that co-accused Samirkhan Ferojkhan Pathan who was also apprehended and detained under the order of detention passed on the same day i.e. on 11.03.2004 for his involvement in all the aforesaid five cases of theft of motor vehicle, has been set at liberty by this Court by quashing the order of detention on merits vide Oral Judgment dated 19.08.2004 (Coram: Hon'ble Mr. Justice P.B. Majmudar) while dealing with Spl.Civil Application No. 4015/2004 filed by the said co-accused Samairkhan Pathan. Zerox copy of the decision dated 19.08.2004 passed by this Court in aforesaid writ petition is produced by ld. counsel Mr. Prajapati which is taken on record.

4. It is not a matter of dispute that the petitioner and the petitioner of Spl.C.A. No.4015/2004 viz.

Samirkhan Pathan, both are the accused of all the five criminal cases referred to in the grounds of detention. Ld. AGP Ms. Punani has fairly accepted that co-accused has been set at liberty by a reasoned order as stated by ld. counsel Mr. Prajapati.

5. I have gone through the aforesaid decision dated 19.08.2004 passed by this Court (Coram: Hon'ble Mr.Justice P.B.Majmudar) in Spl.C.A. No.4015/2004 preferred by co-accused Samirkhan Pathan challenging the order of detention. In the said decision, this Court, after referring to the decision of the Apex Court in the case of Harpreet Kaur v/s State of Maharashtra, AIR 1992 SC 979 and reproducing paras -14 & 17 of the said decision, has held that the order of detention passed against the co-accused is bad in law and requires to be quashed and set aside.

6. So, adopting the reasons assigned by this Court in the aforesaid decision dated 19.08.2004 in Spl.C.A. No. 4015/2004 and on the sole ground of parity, the order of detention passed against the present petitioner-detenu also requires to be quashed and set aside.

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 11.03.2004 passed by the Commissioner of Police, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute. Direct Service is permitted.

[C. K.BUCH, J]

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